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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,895	12/14/2005	Peter Geisser	GIL-15940	5889

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EXAMINER	
PAK, JOHN D	

ART UNIT	PAPER NUMBER
1616	

MAIL DATE	DELIVERY MODE
05/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/531,895	GEISSER ET AL.	
	Examiner	Art Unit	
	John Pak	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 12-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7,8,12,18 and 19* is/are rejected.

7)☒ Claim(s) *2-6, 12-17 and 20-21* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-8 and 12-21 are pending in this application.

Claims 2-6, 12-17 and 20-21 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 2, the base method claim, sets forth a detailed method for producing the complex of claim 1. However, the process of claim 2 fails to recite language that would ensure the complex product has a weight average molecular weight of 80,000 to 400,000. Claim 2 and all claims dependent thereon, which do not cure this deficiency, therefore fail to further limit the subject matter of claim 1.

Full English translation of CN 20020612 (previously cited as HCAPLUS abstract 2003:135397) is cited to further show the state of the art. Review of the English translation vis-à-vis presently amended claims resulted in no further application of this reference at this time.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 7-8, 12, and 18-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-16 and 26-27 of copending Application No. 11/815,568 in view of Thaburet et al. and Dokic et al.

Claim 26 of the copending application sets forth a process of making an iron (III) maltodextrin complex comprising contacting maltodextrin having a DE of 5-37 with an aqueous hypochlorite solution having a pH of greater than 7 to form a reaction mixture and contacting the mixture with an aqueous iron (III) salt solution. Claims 13-16 of the copending application set forth a medicament comprising a complex of an oxidation product of at least one maltodextrin with iron (III) in various medication forms and molecular weight of 30,000-500,000 for another carbohydrate, polymaltose, in another iron (III) carbohydrate complex.

Thaburet et al. disclose oxidizing maltodextrin with TEMPO-NaBr-NaClO oxidizing system (page 22, first two full paragraphs starting from the left column; see

also the entire article). pH 9.5 is disclosed to best achieve minimized depolymerization of polysaccharides (page 28, right column, last paragraph). Commercial maltodextrins have DE of less than 20 (page 22, right column, second full paragraph) [1].

The article by Dokic et al. establishes the well-known fact that maltodextrins have a DE value range of 2-20, have wide applications of utility (page 435, first paragraph) and have various degree of polymerization (page 436, see Table 1).

The process steps of the copending claims are substantially similar to those of instant claims. Iron (III) chloride is not expressly disclosed but this is a common Iron (III) salt that would have been fairly suggested by "iron(III) salt" in copending claim 26. Weight average molecular weight of 80,000 to 400,000 is not expressly disclosed in the copending claims, but one having ordinary skill in the art would have been able to arrive at a weight average molecular weight within such wide range from the copending claimed DE value range (higher DE means more lower molecular weight polymers), commercial DE range for maltodextrin, and guidance provided by component iron (III) polymaltose molecular weight of 20,000 to 500,000.

[1] 100 divided by a number greater than 5 means the DE is less than 20 (Thaburet et al., p. 22, right column, second full paragraph).

Therefore, one having ordinary skill in the art would have recognized the instant claimed invention as an obvious variation of the invention claimed in claims 13-16 and 26-27 of the copending application.

This is a provisional obviousness-type double patenting rejection.

Applicant states that a terminal disclaimer was filed over the above referenced copending application, but the record of this case does not show such a filing. Applicant also argues against the previously applied obviousness type double patenting ground of rejection, but this is a new ground necessitated by applicant's amended claims and applicant's arguments do not pertain to this ground of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620.** The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**. The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Pak/
Primary Examiner, Art Unit 1616